

S.B. 1554 SESSION LAW 1998-218

AN ACT TO AMEND THE EXCISE TAX ON CONTROLLED SUBSTANCES.

Whereas, North Carolina enacted the Controlled Substances Tax Act in 1989 for the purpose of levying an excise tax to generate revenue for State and local law enforcement agencies and the General Fund and to collect taxes from persons engaged in a highly profitable activity that had escaped taxation; and

Whereas, the intent of the General Assembly in enacting this tax continues to be to raise revenue through a civil tax on this highly profitable activity; and

Whereas, the intent of the General Assembly in enacting this tax is not to create a criminal penalty, other than for nonpayment of the tax, above and beyond the criminal sanctions in the criminal code; and

Whereas, upon constitutional challenge on double jeopardy grounds by a defendant who had been assessed for the tax and also convicted of criminal drug charges, the North Carolina Court of Appeals held that the tax "was not predicated upon whether the taxpayer in possession of the controlled substance has been arrested or charged with criminal conduct, nor is it assessed on property that necessarily has been confiscated or destroyed"; and

Whereas, the court further held that the statute "is a legitimate and remedial effort to recover revenue from those persons who would otherwise escape taxation when engaging in the highly profitable, but illicit and sometimes deadly activity of possessing, delivering, selling, or manufacturing large quantities of controlled drugs" and that the statute "does not have such fundamentally punitive characteristics as to render it violative of the prohibition against multiple punishments for the same offense contained in the Double Jeopardy Clause"; and

Whereas, that decision was affirmed on appeal to the North Carolina Supreme Court and not disturbed by the United States Supreme Court; and

Whereas, upon further challenge in the federal courts, the controlled substance tax was found in 1998 to be a criminal penalty, and the United States Supreme Court let the federal ruling stand; and

Whereas, according to law enforcement officials, the current market price of cocaine is approximately \$100.00 per gram and hence the excise tax rate proposed by this act is proportionately less than the tax imposed by the taxing authorities in many states upon cigarettes; and

Whereas, it is, therefore, the intent of the North Carolina General Assembly to modify the tax in accordance with the recent federal court ruling, so that the tax may continue to be assessed in a manner consistent with the law as interpreted by the federal courts; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-113.107(a) reads as rewritten:

"(a) Controlled Substances. -- An excise tax is levied on controlled substances possessed, either actually or constructively, by dealers at the following rates:

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